

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200504
BOARD DATE: 20121119

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020902

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63J10/Chemical and Quartermaster Equipment Repair), medically separated for neck pain. The condition began with ruck marching during basic training in 2000, and was not associated with a surgical indication. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was issued a permanent U4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded non-radicular neck pain with degenerative arthrosis at facets C7-T1 and T1-T2 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the neck pain condition as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Arthritis is degenerative and continues to get worse. Has negatively affected my ability to be a mom or have more children. I have attached all letters and documents I have sent in during this whole process, since I have yet to hear anything about my initial appeal. I apologize if you don’t need these but I thought the more info the better.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records.

RATING COMPARISON:

Service PEB – Dated 20020521			VA (~1 Mo. Pre-Separation) – All Effective Date 20020903			
Condition	Code	Rating	Condition	Code	Rating	Exam
Neck Pain	5099-5003	10%	Osteoarthritis Upper Back and Neck	5010	10%	20020730
↓No Additional MEB/PEB Entries↓			0% X 2			20020730
Combined: 10%			Combined: 10%*			

*VA decision 20110919 rated upper back separately from neck, at 10%, effective 20110103; combined 20%

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-aggravated condition continues to burden her. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-

connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Neck Pain (non-radicular) Condition. The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004, and were identical to the 2002 VASRD standards used by the VA in its initial rating decision. The pre-2004 ratings were based on a judgment as to whether the disability was mild, moderate or severe. The 2004-to-current standards are grounded in range of motion (ROM) measurements. IAW DoDI 6040.44, this Board must consider the appropriate rating for the CI's back condition at separation based on the VASRD standards in effect at the time of separation (i.e. pre-2004 standards). Although the CI suffered a neck injury at age 15 during gymnastics, her neck pain subsided until she was required to perform activities of basic training. Ongoing pain did not respond to physical therapy, chiropractic care or medication. X-rays showed arthritic changes of the facet joints of C-7 through T2, and decreased disc space at C6-7. A bone scan was negative and magnetic resonance imaging (MRI) was normal. At the narrative summary (NARSUM) exam on 3 April 2002, 5 months prior to separation, the CI reported an inability to carry a rifle, lift more than 15 pounds or wear any professional gear due to pain only at the base of her neck. She denied radiation of pain or upper extremity numbness or tingling. She was taking no medication. Physical examination noted a normal gait. Tenderness was present at the area of the C7 and T1 vertebrae. Range-of-motion (ROM) of the neck and thoracic spine was considered to be "full." Neurologic findings of the upper extremities were normal. At an outpatient primary care clinic visit on 13 May 2002, 4 months prior to separation, the CI complained of constant burning and tingling present for several days. Exam revealed full ROM of the cervical and thoracic spine. No tenderness was present. At an emergency room visit on 13 June 2002, 3 months prior to separation, to evaluate a complaint of head trauma, the examination noted the neck and spine to be non-tender and to exhibit full ROM.

At the VA Compensation and Pension (C&P) exam on 30 July 2002, a month prior to separation, the CI reported that her pain was constant at a severity of seven on a 0-10 scale. Prolonged driving, certain weather changes, walking, computer work or any lifting made it worse. Pain interfered with her sleep. She denied numbness, tingling or weakness of her upper extremities. She took anti-inflammatory medication for pain. Physical examination revealed a normal posture, gait and spinal contour. Tenderness of the C6 to T2 vertebral regions was present. No trapezius muscle spasm was present. Muscle strength of the arms was normal. ROM testing revealed flexion of 60 degrees; normal was considered to be 65 degrees by that examiner, although 45 degrees is normal by current standards. Extension was 25 degrees (normal 45 degrees by current standards), lateral flexion 30 degrees bilaterally (normal 45 degrees by current standards), and rotation 55 degrees bilaterally (normal 80 degrees by current standards). Painful motion was evident. After five repetitions, ROM was reduced to 25 degrees for right lateral flexion, and 45 degrees for right and left rotation. Flexion and extension were unchanged, while left lateral rotation increased to 35 degrees.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both assigned a 10% rating under an arthritis code; the PEB used an analogous 5003 code (degenerative arthritis) while the VA used 5010 (traumatic arthritis). IAW §4.71a, a rating is based on limitation of motion. Although limited motion was apparently not present on the NARSUM exam (specific measurements were not provided), and two subsequent clinical

examinations also documented normal ROM, the PEB's 10% rating was justified under §4.40 (functional loss) or §4.59 (painful motion). The findings on the VA exam justified a 10% rating under the 5290 code for "slight" limitation of motion. The Board debated if a higher rating was warranted using the older VASRD rules in effect at the time. Board members agreed that "moderate" limitation of motion supporting a 20% rating was not present on any of the cited examinations, and further noted that there was no evidence of "moderate recurring attacks" that would justify a higher rating under the 5293 code (intervertebral disc syndrome). Board members also agreed that a higher rating was not justified under §4.45, since additional limitation of motion after repetitive motion on the VA exam was minimal. The Board finally considered if symptoms and findings warranted disability ratings under two separate codes (limitation of cervical spine motion and limitation of dorsal spine motion). Under the VASRD in effect at the time, "both under ankylosis and limited motion, ratings should not be assigned for more than one segment by reason of involvement of only the first or last vertebrae of an adjacent segment." Board members agreed that involvement of the lowermost cervical vertebra and uppermost thoracic vertebra in this case represented such an "adjacent segment." Furthermore, assigning two separate ratings in this case was not warranted IAW VASRD §4.14 (avoidance of pyramiding). After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the neck pain condition.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Neck Pain	5099-5003	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX
 President
 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120021424 (PD201200504)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA